
**IN THE UNITED STATE DISTRICT COURT
STATE OF UTAH, CENTRAL DIVISION**

BRENT GORDON, et. al.,

Plaintiffs,

vs.

JORDON SCHOOL DISTRICT, et. al.,

Defendants.

RULING & ORDER

Case No. 2:17-cv-00677

District Court Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

This matter was referred to Magistrate Judge Pead pursuant to a 28 U.S.C. § 636(b)(1)(A) referral from District Court Judge Robert J. Shelby. (ECF No. 29.) On April 26, 2019, the court heard oral argument on Plaintiff's Motion to Compel (ECF No. 126) and Plaintiffs' Motion to Conduct Survey (ECF No. 131.) Having considered the parties' memoranda, arguments presented at the hearing and relevant legal authorities, the court rules as set forth on the record and as follows.

Plaintiffs' Motion To Compel.

Rule 36 allows a party to serve a written request to admit "the truth of any matters within the scope of Rule 26(b)(1) relating to facts, the application of law to fact, or opinions about either." Fed. R. Civ. P. 36(a)(1). If a matter is not admitted, rule 36 requires the answering party to specifically deny or state in detail why:

the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest.

Fed. R. Civ. P. 36(a)(4). An answering party “runs no risk of sanctions if the matter is genuinely in issue” since sanctions are only appropriate when there is no justifiable reason to support a failure to admit. Fed. R. Civ. P. 36, *Advisory Committee Notes* (2015); Fed. R. Civ. P. 37(2).

Here, as discussed on the record, specific words and terms incorporated in Plaintiffs’ requests are genuinely in issue. As a result, Defendants’ qualifications, identification of hypotheticals or partial admissions are not unreasonable or inappropriate under the rule. Fed. R. Civ. P. 36. Accordingly, and the court DENIES Plaintiffs’ motion to compel and request for sanctions.

To the extent that the parties find it beneficial they are invited to meet and confer in good faith to reach agreement on the definition of core terms relevant to the litigation. Looking forward, to reach agreement on precise definitions would clearly be advantageous to both the litigants and the court. Yet, further discussion may be unnecessary given that during oral argument Plaintiffs asserted they have obtained necessary discovery responses through depositions conducted after filing their motion to compel. Further, Defendants contend that the disputed terminology involves legal conclusions more appropriate for determination through a dispositive motion.

At the hearing, Plaintiffs withdrew their request for additional depositions.

Plaintiffs’ Motion To Conduct Survey.

Plaintiffs’ Motion to Conduct Survey is GRANTED in part, and DENIED in part. The motion is GRANTED as to the survey itself. The court agrees that a “properly designed and

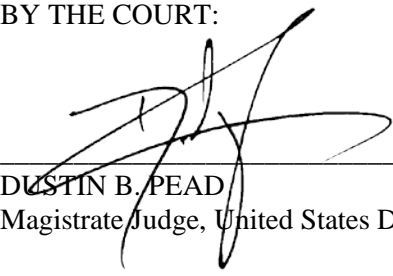
implemented survey” is an appropriate tool to gather information on students’ interests and abilities. *See* Office of Civil Rights, U.S. Dep’t of Educ., *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (2010 Clarification) (ECF No. 131-1.) The motion is DENIED, however, as to the specific survey to be administered. (ECF No. 131-3, ECF No. 141-1.) The parties are ORDERED, within the next twenty-one (21) days, to meet and confer in good faith to reach agreement as to the methodology, content, format, manner of administration, cost and any other issue that may be relevant to the survey process. Each party’s respective survey expert may participate in the meet and confer process. If after such time, the parties are unable to reach agreement, they may submit those issues still in dispute to the court. Any submissions, must specifically identify the exact issue(s) in dispute, each party’s proposed resolution and legal support therefore. Submissions should be filed no later than May 24, 2019.

IT IS SO ORDER

Plaintiffs’ Motion to Compel is DENIED (ECF No. 126); and as set forth above
Plaintiffs’ Motion to Conduct Survey is GRANTED in PART and DENIED in PART
(ECF No. 131.)

DATED this 29th day of April, 2019.

BY THE COURT:



DUSTIN B. PEAD
Magistrate Judge, United States District Court

